

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION**

**IN RE: BOSTON SCIENTIFIC CORP.
PELVIC REPAIR SYSTEM PRODUCTS
LIABILITY LITIGATION**

MDL No. 2326

**HONORABLE
JUDGE JOSEPH R. GOODWIN**

Unopposed Motion for Approval of Qualified Settlement Fund

Thomas P. Cartmell, Esquire (“Counsel”), on behalf of the one thousand, eight hundred seventeen (1,817) claimants (“Claimants”) represented by Wagstaff & Cartmell, LLP (“Claimants’ Counsel”), which Claimants are settling claims against Boston Scientific Corp. as defined in and in connection with a Master Settlement Agreement anticipated to be signed by the Parties on during the week of April 9, 2018, move this Court for an Order to aid in the efficient processing and administration of a confidential settlement agreement (the “Settlement Agreement”) between Claimants’ Counsel and Boston Scientific Corp., to resolve the claims of certain claimants relating to Boston Scientific Corp. pelvic mesh products¹. Claimants’ Counsel and Boston Scientific Corp. are collectively referred to herein as “the Parties.”

This Motion seeks an Order (1) approving the escrow agreement (“Wagstaff Cartmell Boston Scientific Corp. Escrow Agreement”), attached hereto as Exhibit A, which forms a settlement escrow account named the Wagstaff Cartmell Boston Scientific Corp. Settlement Escrow Fund (“Settlement Fund”) pursuant to the terms of the Settlement Agreement, (2) retaining continuing jurisdiction and supervision over the Settlement Fund, and (3) determining that the Settlement Fund, including any subaccounts thereof (“Accounts”), together constitute a single “qualified settlement fund” within the meaning of section 468B of the Internal Revenue

¹ The Settlement Agreement is not being filed with the Court because it contains confidential terms. Disclosure of such confidential information concerning the terms of the settlement would not be consistent with this Court’s stated goal of achieving a resolution of claims in this MDL through confidential negotiation and settlement.

Code of 1986, as amended (“Code”) and Treasury Regulation sections 1.468B-1, *et seq.* (“Regulations”).

The Parties have agreed to establish the Settlement Fund as a “qualified settlement fund” under the Code, subject to Court approval. The exact allocation among and distribution to persons or entities asserting a claim of subrogation or reimbursement has not been finalized at this time. Payment of required settlement amounts into a qualified settlement fund will afford Claimants’ Counsel and associated counsel time to identify and resolve liens and/or subrogation rights, while knowing that funds are available and held by a third party. The Court should approve the establishment of the Settlement Fund as a “qualified settlement fund” under the Code and Regulations, subject to the Court’s continuing jurisdiction, as in the best interest of the Parties and the claimants covered by the Settlement Agreement. Without approval by and continuing jurisdiction of the Court, the Settlement Fund would neither satisfy the terms of the Settlement Agreement, nor satisfy the requirements of section 1.468A-1(c)(1) of the Regulations, which requires that a qualified settlement fund be “established pursuant to an order of, or is approved by, the United States, any state (including the District of Columbia) territory, possession, or political subdivision thereof, or any agency or instrumentality (including a court of law)... and is subject to the continuing jurisdiction of that governmental authority.”

The Settlement Fund will qualify as a “qualified settlement fund” under section 468B of the Code and sections 1.4668B-1, *et seq.* of the Regulations, as: (1) the Settlement Fund is being established subject to approval of the Court, and will be operated pursuant to the terms and conditions of the Wagstaff Cartmell Boston Scientific Corp. Escrow Agreement; (2) the Settlement Fund will be subject to the continuing jurisdiction and supervision of the Court; (3) the Settlement Fund is being established to resolve or satisfy claims of alleged tort or

violation of law arising out of implantation of one or more Boston Scientific Corp. Products; and (4) the Settlement Fund will be an escrow account, and its assets will be segregated from the general assets of the transferor and deposited therein. The Escrow Agreement will establish Accounts to be used solely for permissible purposes in administering the Settlement Agreement, and, with approval of the Parties, the Escrow Agent may establish additional Accounts for purposes of administration of the Settlement agreement. The Settlement Fund, including all Accounts which may be established, together constitute a single qualified settlement fund.

Claimants' Counsel has selected Providio MediSolutions LLC ("Providio"), as the Qualified Settlement Fund Administrator (the "QSF Administrator") pursuant to the terms, conditions, and restrictions of the Master Settlement Agreement ("MSA"); and Commerce Bank ("the Bank") as the financial institution that will hold the Settlement Funds within the meaning of section 1.46B-2(k)(3) of the Regulations. The funds held by the Bank in the Settlement Fund shall be disbursed by the QSF Administrator only pursuant to and in conformance with the terms of the Wagstaff Cartmell Astora Escrow Agreement and the Settlement Agreement, which also include provisions for payments into the MDL 2187 Fund.

Claimants' Counsel states that it has conferred with counsel for Boston Scientific Corp., and counsel for Boston Scientific Corp. have authorized Claimants' Counsel to represent that Boston Scientific Corp. consents to the granting of this motion.

CONCLUSION

For the reasons stated above, the Parties respectfully request that the Court approve establishment of the Settlement Fund as a qualified settlement fund, and enter an Order in the form submitted herewith.

DATED: April 11, 2018

Respectfully submitted,

/s/ Thomas P. Cartmell

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served electronically via the Court's ECF system on April 11, 2018, and to the following via email:

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